

No. 14539.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

THE LOS ANGELES COUNTY PIONEER SOCIETY,

Appellant,

vs.

STATE OF CALIFORNIA and HISTORICAL SOCIETY OF
SOUTHERN CALIFORNIA,

Appellees.

APPELLEES' BRIEF.

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APPELLEES' BRIEF.

*To the Honorable the United States Court of Appeals
for the Ninth Circuit:*

Preliminary Statement.

It must be emphasized at the outset of this Honorable Court's consideration of this matter that we are not concerned here with an appeal taken in the ordinary and accepted manner from an adverse decision of a district court rendered upon pleadings duly and regularly filed and proceedings conducted in the usual manner in which proceedings are conducted after issue has been joined.

Reference to Appellant's Opening Brief fails to disclose that the true and proper parties to the controversy from

which stem the proceedings in the court below and in this Honorable Court were and are Los Angeles County Pioneer Society and the beneficiaries of the public charitable trust of which the Pioneer Society was trustee, it being an established principle in the State of California and generally that beneficiaries of charitable trusts can sue or be sued only by or through the Attorney General of the State. The Historical Society of Southern California became a party to the controversy when it was named, in the course of proceedings in the State courts, to succeed the Los Angeles County Pioneer Society as trustee of the aforesaid public charitable trust.

It would appear accordingly, if there be a properly perfected appeal pending before this Honorable Court, the objective of the appeal being simply to wrest for private use and from the Historical Society, as trustee of a public charitable trust, funds dedicated to beneficiaries represented solely by and through the Attorney General of the State of California, that the proper party appellees are the Attorney General of the State of California and the Historical Society of Southern California, rather than the "State of California" and the Historical Society as set forth in the caption of Appellant's Opening Brief. Although we raise no issue regarding the inaccurate designation of the appellees by appellant, we direct this Court's attention to this point for the sake of accuracy inasmuch as to avoid confusion we have continued the use of the caption first employed by appellant.

Statement of the Case.

In view of the full and complete recital by Justice Traynor in his decision in *Los Angeles County Pioneer Society, et al. v. Historical Society of Southern California, et al.*, 40 Cal. 2d 852, 257 P. 2d 1, of most of the pertinent facts involved in the instant appeal preceding appellant's entry into the federal district court, and in view of the full and complete statement contained in the brief filed by Oscar Lawler, Esq., on behalf of the Historical Society of Southern California supplementing Justice Traynor's decision to complete the statement of all the pertinent facts involved herein, we will not burden this Court by an attempt to rephrase and duplicate the factual recitals in Justice Traynor's opinion and in Mr. Lawler's brief, but respectfully request this Honorable Court to deem Justice Traynor's opinion and Mr. Lawler's brief included herein by reference as if set forth in full herein.

We join with Mr. Lawler in specifically emphasizing the total and established failure of the documents filed by appellant with the district court, and purporting to commence a bona fide Chapter XI proceeding, to disclose material factual information, including the action of the California Supreme Court in 40 Cal. 2d 852, *supra*, although this information, as is indisputably apparent, was in appellant's possession at the time.

ARGUMENT.

I.

Dissolution of a Corporation Pursuant to a Judgment Rendered by a Court of Competent Jurisdiction Cannot Be Avoided or Delayed by or Through Resorting to the Commencement of a Chapter XI Proceeding.

As the record herein, the decision of the California Supreme Court in 40 Cal. 2d 852, *supra*, and the brief of our co-appellee, Historical Society of Southern California, amply establish, appellant purported to commence a proceeding under Chapter XI of the Bankruptcy Act after a final judicial determination that appellant was the trustee of a public, charitable trust; that all assets in the custody, possession or control of appellant constituted the assets of that public, charitable trust; that appellant's custody, possession or control of such assets was solely that of a trustee of said public charitable trust and not as owner; that the Historical Society was the duly appointed successor trustee of the aforesaid charitable trust assets; that appellant was required to render a formal accounting of its trusteeship of the aforesaid charitable trust; and that upon said accounting appellant would be formally dissolved by judicial decree.

Obviously, apart from judicial authority therefor, no purpose could possibly be served by permitting appellant to proceed with a Chapter XI proceeding, even if appellant had straightforwardly attempted to do so by way of a petition predicated upon the facts as they in reality existed at the time the "petition" involved herein was filed, inasmuch as a Chapter XI proceeding is intended only to so arrange the financial affairs of a corporation that the corporation may be enabled to continue its cor-

porate existence, whereas appellant's corporate death had been judicially decreed by final judgment of the State court. It is this common sense approach to a resolution of the problem presented to the Bankruptcy Court, when a corporation whose imminent dissolution has been decreed by a court of competent jurisdiction seeks to postpone or avoid the death penalty by seeking refuge in a Chapter XI proceeding, which has been followed by the United States Supreme Court in *Chicago Title & Trust Co. v. Forty-One Thirty-Six Wilcox Bldg. Corporation*, 302 U. S. 120, 58 S. Ct. 125, and by the United States Court of Appeals for the Third Circuit in *In re Distillers Factors Corp.*, 187 F. 2d 685. In the latter case the Court of Appeals affirmed the action of a District Court Judge, who dismissed a Chapter XI proceeding *sua sponte*, immediately upon ascertaining that the State, in which the petitioner had been incorporated, had commenced action which would result in the corporation's dissolution. It was the view of the Court of Appeals that the filing of a petition under Chapter XI by a corporation well on the road to final dissolution is, as the brief filed by the Historical Society contends, an obvious imposition upon the court requested to entertain the petition.

II.

The Action of the District Court Was Not Arbitrary in Any Respect.

Although, in view of the established, manifest, substantial variances between the matters contained in the various documents stricken by the court below and the facts, there appears to be no need to analyze the Statement of Facts contained in Appellant's Opening Brief, it must be emphasized in fairness to the District Court Judge that coun-

sel for appellant was apprised of our intention to secure a dismissal of the Chapter XI proceeding on the morning of July 27, 1954; that the office of appellant's counsel was advised shortly after the luncheon hour on July 27, 1954 that the Honorable William C. Mathes, District Judge, would review the pending Chapter XI proceeding the next day at 2:00 P. M.; that appellant appeared and participated in said hearing on July 28, 1954 without objection although it was fully apparent that the District Judge was considering our request that he dismiss the pending Chapter XI proceeding on his own motion [Rep. Tr. pp. 26-29]; and that upon continuance of the hearing to July 30, 1954 appellant again appeared and participated therein without objection and with full knowledge of our request that the District Judge dismiss the Chapter XI proceeding on his own motion.

Conclusion.

For the reasons set forth above and in the brief filed by the Historical Society of Southern California, in which, as set forth above, we concur, it is respectfully submitted that the orders below should be affirmed.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General,

EDWARD SUMNER,
Deputy Attorney General,
Attorneys for Appellees.